

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN THOMAS ENTLER,

Plaintiff,

V.

ELDON VAIL.

Defendant.

No. C08-5695 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
ACTION WITH PREJUDICE

The Magistrate Judge recommends that the motion to dismiss this civil rights action be granted. Plaintiff has filed objections to the Report and Recommendation. This Court is not persuaded by these objections.

As detailed by the Magistrate Judge, the State of Washington Department of Corrections has no duty under the United States Constitution to provide service of process for inmates. The State Court's determination not to provide service of process in Plaintiff's cause of action seeking to impose personal liability does not implicate the right to access to courts. The Plaintiff's complaints reached the state courts. Once the pleadings reached the courts, the court

1 has discretion as to whether or not to order service at state expense or require Plaintiff to pay for
2 service. There is no constitutional duty under which the Department of Corrections is required
3 to accomplish service on behalf of the inmate. See Lewis v. Casey, 518 U.S. 343, 355 (1996)

4 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
5 Richard Creatura, objections to the Report and Recommendation, and the remaining record, does
6 hereby find and ORDER:

- 7 (1) The Court adopts the Report and Recommendation;
- 8 (2) The motion to dismiss this action is **GRANTED**. This action is **DISMISSED**
9 **WITH PREJUDICE** for failure to state a claim. Amendment will not cure the
10 central defect in the original complaint. The Department of Corrections does not
11 have the obligation to provide service of process services for incarcerated inmates.
- 12 (3) The motion to strike the reply brief is also **DENIED**.
- 13 (4) The Clerk is directed to send copies of this Order to plaintiff, and to the Hon. J.
14 Richard Creatura.

15 DATED this 1st day of June, 2009.

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19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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